

House Bill 573

By: Representatives Lindsey of the 54th, Willard of the 49th, Smith of the 129th, Chambers of the 81st, Ralston of the 7th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as to change certain provisions relating to venue; to change provisions relating to determination of venue in actions against joint defendants and the effect of dismissal of one or more parties; to provide that all joint defendants may elect any county and court in which venue is otherwise proper; to provide that such election shall waive any future objection to the venue selected; to provide for practice and procedure; to provide for other related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-10-31, relating to actions against certain codefendants residing in different counties, and inserting in lieu thereof the following:

"9-10-31.

(a) The General Assembly finds that Paragraph IV of Section II of Article VI of the Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in a county other than the county of the defendant's residence only if the Georgia resident defendant is a joint obligor, joint tort-feasor, joint promisor, copartner, or joint trespasser.

(b) Subject to the provisions of Code Section 9-10-31.1, joint ~~Joint or joint and several~~ tort-feasors, obligors, or promisors, or joint contractors or copartners, residing in different counties, may be subject to an action as such in the same action in any county in which one or more of the defendants reside. ~~If, however, the court determines prior to the commencement of trial that:~~

(1) ~~The plaintiff has brought the action in bad faith against all defendants residing in the county in which the action is brought; or~~

1 ~~(2) As a matter of law, no defendant residing in the county in which the action is brought~~
2 ~~is a proper party,~~
3 ~~the action shall be transferred to the county and court which the plaintiff elects in which~~
4 ~~venue is proper. The burden of proof on the issue of venue shall be on the party claiming~~
5 ~~improper venue by a preponderance of evidence.~~

6 (c) In any action involving a medical malpractice claim as defined in Code Section 9-9-60,
7 a nonresident defendant may require that the case be transferred to the county of that
8 defendant's residence if the tortious act upon which the medical malpractice claim is based
9 occurred in the county of that defendant's residence.

10 ~~(b)(d)~~ If all defendants who reside in the county in which an action is pending are
11 discharged from liability before ~~the commencement of trial~~ or upon the return of a verdict
12 by the jury or the court hearing the case without a jury, a nonresident defendant may
13 require that the case be transferred to a county and court in which venue would otherwise
14 be proper. If venue would be proper in more than one county, the plaintiff may elect from
15 among the counties in which venue is proper the county and the court in which the action
16 shall proceed.

17 ~~(c) If all defendants who reside in the county in which the action is pending are discharged~~
18 ~~from liability after the commencement of trial, the case may be transferred to a county and~~
19 ~~court in which venue would otherwise lie only if all parties consent to such transfer.~~

20 ~~(d) For purposes of this Code section, trial shall be deemed to have commenced upon the~~
21 ~~jury being sworn or, in the instance of a trial without a jury, upon the first witness being~~
22 ~~sworn.~~

23 (e) Nothing in this Code section shall be deemed to alter or amend the pleading
24 requirements of Chapter 11 of this title relating to the filing of complaints or answers.

25 ~~(f) This Code section shall apply to actions filed on or after July 1, 1999. In any action~~
26 filed on or after July 1, 2005, if all defendants elect in writing the county and court in
27 which the action shall be tried, such election of venue shall control if venue is otherwise
28 proper in such county and court. In order to be effective, such election of venue must
29 contain a written waiver executed by each defendant agreeing that no objection or
30 challenge will thereafter be raised to the county and court selected, even if all defendants
31 who reside in that county are discharged from liability or otherwise dismissed from the
32 action. In order to be effective, the election of venue must be served on all parties and filed
33 with the court within ten days after the date of filing of the last answer filed in the action.
34 For this purpose, an amendment or other action by which a new party defendant is added
35 shall reopen the opportunity to allow an election of venue or a new election of venue within
36 ten days after the filing of the answer of the new party defendant. Where a proper election

1 of venue is filed, the case shall be transferred to the county and court elected if different
2 from the county or court in which the action was filed."

3 **SECTION 2.**

4 This Act shall become effective July 1, 2005, and shall apply with respect to actions filed on
5 or after that date.

6 **SECTION 3.**

7 All laws and parts of laws in conflict with this Act are repealed.